

IN THE COURT OF APPEALS OF TENNESSEE  
AT NASHVILLE  
January 4, 2001 Session

**BONNIE S. PRIVETTE, ET AL. v. DANELLE KEYES, ET AL.**

**Appeal from the Circuit Court for Davidson County  
No. 99C-1077     Barbara N. Haynes, Judge**

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**No. M2000-01635-COA-R10-CV - Filed February 28, 2001**

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This case presents a Rule 10 Extraordinary Appeal on the question of whether certain amendments to Tenn. Code. Ann. § 56-7-1206 of the Uninsured Motor Vehicle Coverage statutes may be retroactively applied to a case that arose before the effective date of the amendments. The trial court ruled that they could. We reverse.

**Tenn. R. App. P. 10 Appeal By Permission; Judgment of the Circuit Court  
Reversed and Remanded**

BEN H. CANTRELL, P.J., M.S., delivered the opinion of the court, in which WILLIAM C. KOCH, JR. and PATRICIA J. COTTRELL, JJ., joined.

Mark A. Baugh, Nashville, Tennessee, for the appellant, Allstate Insurance Company.

Daniel P. Berexa, Nashville, Tennessee, for the appellees, Bonnie and Donald Privette.

Mark S. LeVan, Nashville, Tennessee, for the appellee Danelle Keyes.

**OPINION**

**I.**

On May 12, 1998, Bonnie Privette and Danelle Keyes were involved in an auto accident in Nashville. Ms. Privette and her husband Donald Privette filed suit against Ms. Keyes on April 19, 1999, asking \$350,000 in damages plus \$50,000 for loss of consortium. On the same day, a summons was issued to the Privettes' uninsured motorist carrier, Allstate Insurance, in accordance with the procedures set out in Tenn. Code. Ann. § 56-7-1206 of the Uninsured Motorist Statutes.

The Tennessee Legislature enacted certain amendments to Tenn. Code. Ann. § 56-7-1206 on June 1, 1999 [Acts 1999, chapter 506 § 1], which established a new procedure for dealing with

claims that involve both liability insurance and uninsured motorist coverage. The Act recited that the amendments would become effective October 1, 1999.

Under the amended statute, the injured party could release the defendant from any further liability for damages in excess of the limits of the defendant's liability policy, if the liability carrier offered to pay its policy limits to the plaintiff, and the plaintiff accepted. The claim against the uninsured motorist carrier could then be submitted to binding arbitration on liability and damages. If the uninsured motorist carrier wished to retain its rights to a jury trial and to subrogation against the defendant, it was required to make payment to the plaintiff prior to trial, in an amount equal to the amount paid by the liability carrier.

Ms. Keyes' liability carrier, GEICO, subsequently offered its bodily injury limits of \$25,000 per person to the plaintiffs. Ms. Keyes' attorney then informed the plaintiffs' attorney that she wished to proceed in accordance with the amended statute, and the plaintiffs' attorney notified Allstate that he intended to rely on the amendments. The insurer responded by challenging the applicability of the amendments to the current action.

On April 14, 2000, the plaintiffs filed a Motion to Compel Allstate to make an election under the amended version of Tenn. Code. Ann. § 56-7-1206. At the hearing on the motion, Allstate argued that the amendment was not retrospectively applicable. However, the trial court granted the motion, ruling that the amendment was procedural in nature and therefore retrospectively applicable to all pending cases. *Cf. Ross v. Tennessee Farmers Mutual Insurance*, 592 S.W.2d 897 (Tenn. Ct. App. 1979).

Allstate subsequently filed a Motion for Interlocutory Appeal of the trial court's ruling. Among other things, Allstate argued that appellate review was appropriate at this stage of the proceedings because of the need to develop a uniform body of law. The insurer noted that a judge in another section of the court had issued a ruling on the very same issue that was contrary to the trial court's ruling in this case. *Nipper v. James*, No. 99C-1351 (Davidson County Second Circuit Court, Feb. 4, 2000).

The trial court denied the Motion for Interlocutory Appeal, and on July 3, 2000, Allstate gave written notice that it was declining binding arbitration in order to preserve its subrogation rights. That would have been the end of the story, except that on July 7, 2000, Allstate applied to this court for an Extraordinary Appeal under Rule 10. We granted the application on July 31.

## II.

The Tennessee Constitution reads "That no retrospective law, or law impairing the obligation of contracts, shall be made." Article 1, § 20. That section has uniformly been interpreted to mean that the Legislature may enact laws that have a retrospective application only so long as they do not impair the obligations on contracts or impair vested rights. *See Wynne's Lessee v. Wynne*, 32 Tenn. 404 (1852); *Hamilton County v. Gerlach*, 140 S.W.2d 1084 (Tenn. 1940).

Statutes that are considered to be procedural or remedial in nature may generally be applied retrospectively to cases pending at the time of their effective date. *Saylors v. Riggsbee*, 544 S.W.2d 609 (Tenn. 1976). The rationale is that such statutes do not affect the vested rights or liabilities of the parties, because they merely address the way in which a legal right is enforced, or provide a means for redressing wrongs and obtaining relief. *Nutt v. Champion International Corp.*, 980 S.W.2d 365 (Tenn. 1998).

As a practical matter, of course, many statutes that were enacted for purposes of procedural reform so impair vested rights that their retrospective application is not permitted. See, for example, *Kee v. Shelter Insurance*, 852 S.W.2d 226 (Tenn. 1993) (amendments to the savings statute). There are also cases where a party has claimed that retrospective application of a statute would impair its rights, but where the courts have held that the purported effect upon those rights do not prevent them from applying the statute retrospectively. See *Morford v. Yong Kyun Cho*, 732 S.W.2d 617 (Tenn. Ct. App. 1987) (change in procedures for avoiding the jurisdictional limits of general sessions courts when appealing from that court to circuit court).

All the parties have quoted the same language from *Ross v. Tennessee Farmers Mutual Insurance*, 592 S.W.2d 897 (Tenn. Ct. App. 1979) in their briefs, and all are in agreement that the formula contained therein is applicable to the question before us.

“remedial or procedural statutes apply retrospectively not only to causes of action arising before such acts become law, but to all suits pending when the legislation takes effect, unless the legislature indicates a contrary intention or immediate application would produce an unjust result . . . . The usual test of the ‘substantive’ or ‘procedural’ character of a statute for this purpose is to determine whether or not application of the new or amended law would disturb a vested right or contractual obligation.”

592 S.W.2d at 898.

The appellees observe that there are many cases which hold that a party does not have a vested right to any particular remedy. See *Dowlen v. Fitch*, 264 S.W.2d 824 (Tenn. 1954). They then argue that the amendment does not deprive Allstate of any substantive right, but merely provides the means whereby an uninsured motorist claim may be resolved, and that it “empowers” Allstate by allowing it to elect which procedure it wishes to utilize. We note, however, that the contract of insurance already contains a provision for settling disputes by arbitration, and thus that the amendment cannot be said to enhance Allstate’s rights.

Prior to the amendment, Allstate had an unqualified right to a jury trial. Under the amendment, the insurer must pay \$25,000 to the Privettes in order to exercise that right. There is no provision in the statute for Allstate to recoup the money if the jury returns a verdict for the defendant, or if it renders a verdict for the Privettes in an amount less than \$25,000.

The insurance contract states that Allstate “will pay those damages that an insured person is legally entitled to recover from the owner or operator of an uninsured auto . . . .” The insurer notes that in another case involving uninsured motorist coverage, *Glover v. Tennessee Farmers Mutual Insurance Co.*, 468 S.W.2d 727 (Tenn. 1971), our Supreme Court interpreted the term “legally entitled to recover” to mean entitled to recover as the result of a judgment rendered against an uninsured motorist. Allstate acknowledges that its obligation is broad enough to encompass a judgment against an unknown motorist, but complains that the amendment requires it to pay, even in the absence of any judgment at all, if the insurer desires to exercise its right to a jury trial.

If in the alternative, Allstate elects to arbitrate under the amendment, the defendant is released, and the insurer loses its subrogation right. That right is derived both from Tenn. Code. Ann. § 56-7-1204, and from the contract of insurance which reads in pertinent part:

When we pay any person under this coverage:

1. we are entitled to repayment of amounts paid by us and related collection expenses out of the proceeds of any settlement or judgment that person recovers from any responsible party or insurer. We are not entitled to repayment until after the person we have paid under this coverage has been compensated for all damages which that person is legally entitled to recover.
2. . . .

It appears to us that the amendment to Tenn. Code. Ann. § 65-7-1206 subjects Allstate to risks it did not bargain for at the time it entered into its insurance contract with the plaintiffs. Even if the drafters of the amendment intended a merely procedural change, its application impairs the contract rights of the insurer and it should not be applied retrospectively.

### III.

The trial court’s order of May 17, 2000, compelling Allstate to make an election under Tenn. Code. Ann. § 56-7-1206 is vacated, as is any election made pursuant to that order. Remand this cause to the Circuit Court of Davidson County for further proceedings consistent with this opinion. Tax two-thirds of the costs on appeal to appellees Bonnie and Donald Privette, and one-third to appellee Danelle Keyes.

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BEN H. CANTRELL, PRESIDING JUDGE, M.S.